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RECENT TRUST DECISIONS AND BUSINESS— DISCUSSION

E. DANA DURAND: Professor Hotchkiss's valuable paper covers such a wide field and raises so many questions that he himself has recognized the impossibility of discussing them thoroughly, and in the limited time assigned to me, only a few points can be somewhat superficially touched upon.

Professor Hotchkiss rightly emphasizes the importance which the courts have attached to unfair competitive methods as an evidence of violation of the law and as a thing to be suppressed either by penalties and injunctions directly prohibiting them or by dissolution of combinations practicing them, or by both. It seems desirable to have positive legislation defining the limits of fair and unfair competition, and that for three reasons. First, it is probable that Congress, with the greater variety of men which it contains and of interests which it represents, can frame more just and acceptable definitions of these limits than the courts alone, admirable as have been most of the recent decisions of the Supreme Court in this respect. In the second place, statutes are usually more explicitly worded than court decisions. In the third place, a fairly complete statute could be enacted within the next year or so, although doubtless it would require amendment from time to time, whereas it may take a good many years for a series of court decisions to establish all the various lines of demarcation between fair and unfair competition. At the same time, a statute should not be too specific and detailed in its definiteness. Some discretion should be left to the courts, and the administrative officers who bring cases before the courts, with reference to the interpretation and supplementation of the definitions.

Professor Hotchkiss's paper raises the important question whether it is desirable to proceed as promptly as possible with the dissolution of the trusts or to await the results of further investigation as to the relative efficiency of trusts and of individual concerns. Of investigation there is no end. We have been investigating for twenty-five years. Were it possible for the Commissioner of Corporations to carry out what is understood to be his ambitious program of investigating within the present presidential term the whole subject of relative efficiency, we might wait that much longer. Professor Hotchkiss rightly points out, however, the great complexity of the task proposed by the Commissioner

and the length of time required. I doubt if much better or prompter results in such an inquiry would be obtained by creating a new special commission for the purpose, or even by greatly increasing the force of the Bureau of Corporations. Very few people appreciate at all the magnitude of the task.

Aside from its magnitude, the conclusiveness of the results of a comprehensive investigation of relative efficiency is very doubtful. In the first place, it will be out of the question to attempt to compare the efficiency of the combinations at present with that of the separate concerns before combination. Most combinations were made ten years or more ago. The old records of the concerns before combination would ordinarily not be accessible, while the conditions have so changed in many industries as to render such a comparison practically valueless. In the second place, comparison between trust plants and present independent plants would in many industries be of little significance, because the independent plants have not had a fair show to become efficient during the trust régime. The Standard Oil Company, for example, so oppressed and suppressed its competitors as to keep them small and therefore relatively inefficient. The combinations, which as Professor Hotchkiss has well stated were formed primarily not for the sake of efficiency but for the purpose of monopoly or of promoters' profits, have in many cases taken in practically all the large and efficient plants. Even where independent plants exist, there are often reasons why they are not as efficient as the large plants which would, or at least might, have developed in the entire absence of trusts. Finally it is certain that the inquiry into relative efficiency will fail to result in a uniform answer; some trusts will be found much more and some less efficient than large independent concerns.

I fully agree with the opinion implied in Professor Hotchkiss's paper that both theoretical considerations and the limited amount of information available raise serious doubt whether in most cases combination, as distinguished merely from large scale production, has any important elements of economy. At any rate the elements tending to increase expense or to lessen efficiency are often, I think, the stronger. In most of our great industries, if there were a limited number of large concerns, each would probably be able to secure all the economies from integration of related branches, from large scale operation, from utilization of by-products and the like which are claimed for combinations.

Meantime, every delay in breaking up the combinations renders it more difficult to do so. If, pending investigation, the trusts are allowed to go on for ten or twenty years and are then broken up, the shock to business will be much greater than at present. Moreover, they tend to acquire a sort of vested right to exist. The situation is very different from that with respect to railroads, to the investigation of which the Interstate Commerce Commission is proceeding with such proper thoroughness and deliberation. The railroad industry is recognized as essentially monopolistic and the problem is one of regulating rates rather than of destroying combination. I for one do not want to see regulated monopoly the régime in manufacturing industry and I do not believe it is necessary. The fixing of prices on trust-made goods involves enormous difficulties. If we are to be placed under the necessity of creating a vast machinery for regulating business, we might better proceed to socialism at once.

The only serious question in my mind with reference to the dissolution of the trusts is the question whether competition can actually be restored among plants which have formerly been so intimately related. The experience of the last few years seems to indicate the probability that it can be restored in many cases at least. I do not look for much competition among the former constituent concerns of the Standard Oil Company for a good many years to come. The method of dissolution—the equal distribution of the stocks of the constituent companies among the stockholders of the parent company—and the fact that the combination was of such long standing and that most of the more prominent men in the oil trust have never had any experience of competing with one another, may prevent the rise of competition. On the other hand, competition appears to be active in the tobacco industry since the combination has been dissolved.

Even, however, if competition could not be restored in industries where combinations have hitherto been formed, the enforcement of the anti-trust law will at least prevent the formation of new combinations which otherwise would soon cover a much larger field than at present. This, by the way, is one of the arguments for rigidly pushing the dissolution of trusts. It hardly seems fair to permit those which happened to have organized heretofore to go along indefinitely while virtually preventing the formation of combinations in other industries. It is a well-known fact that

almost no new combinations have been formed since the government began to bring suits under the Sherman Act.

One cannot fail to recognize, however, that there are combinations and combinations, that some have practically no degree of monopoly and make use of no unfair competitive methods. I distinguish not between the good and the bad, but between the monopolistic and the non-monopolistic. It is most undesirable that every combination, however little its monopolistic power, should live under the constant threat of being haled into court. There must be some administrative discretion as to the bringing of suits against combinations, and the authority which exercises that discretion should be in a position to assure non-monopolistic combinations, after careful investigation of them and their methods, of immunity from prosecution. While all recognize the excellence of the judgment which has usually been exercised by the successive attorney generals, it would seem that discretion with respect to the matter of prosecution ought to be lodged in a body of men somewhat like the Interstate Commerce Commission rather than in a single individual subject to change with each administration. To transfer all discretion as to the regulation and prosecution of combinations to the Commissioner of Corporations, a single individual, would not remedy matters; but the creation of a corporation commission of three or five members might do so, particularly if the law provided that no suit for the dissolution of a combination or for the punishment of illegal methods of competition should be brought until after investigation and recommendation by the corporation commission. It would not be the task of the corporation commission to investigate the relative efficiency of combinations and independent concerns, but merely to determine whether combinations were engaging in illegal practices prohibited by law, and whether they were actually restraining or possessed the power to restrain trade. A somewhat superficial investigation would in many cases develop at least *prima-facie* evidence of violation of the law which would result in prompt suits for dissolution or for injunction or penalties.

The commission would of course have other important functions in the administration of the considerable body of law which is bound to be enacted regarding interstate business.

To sum up, I should be glad to see (1) more specific statutes defining unfair methods of competition, (2) the creation of a per-

manent commission to administer the laws regarding concerns engaged in interstate commerce, other than transportation, and (3) the prompt dissolution of all combinations which in any material degree restrain or have the power to restrain trade.

WILLIAM A. RAWLES: Out of the investigation and discussion of the trust question a consensus of opinion has been reached on a few points:

1. Unregulated monopoly is an evil because it possesses power (actual or potential): (1) To control the prices of finished products; (2) To exploit producers of raw materials; (3) To dictate wages and terms of employment to labor; (4) To defraud investors; (5) To corrupt politics; (6) To concentrate wealth in a few hands; in a word, to destroy the very foundations of industrial democracy.

2. Adequate control of industrial monopolies can be secured only through the federal government. The course of events, the continued increase in the number of combinations, their reprehensible methods, their menacing position, and their defiant disregard of state restrictions have impelled us to this conclusion despite some fears of undue concentration of power in the federal government.

When it comes to the approval of specific methods of controlling combinations there is not as yet unanimity of opinion. I shall omit from consideration here the evils incident to the promotion and fraudulent management of corporations. These abuses are not peculiar to combinations, but are often found in independent corporations—sometimes in comparatively small business units. While these technical corporate evils have been greatly accentuated by the rapid growth of combinations, they are due primarily to the tardy development of the law of corporations.

Whatever differences of opinion exist relative to the natural economic advantages of combinations and the necessity of preserving such benefits for the common welfare of society, there is practical agreement that the artificial advantages of corporations must be eradicated. Whatever strength the combination may derive from inherent economies, it is well accepted that most of its power for evil has sprung from artificial advantages, such as government favoritism, evasion of law, railroad rebates, discrimination in prices, sellers' agreements, etc. When once a commanding position has been attained through these artificial ad-

vantages the mere magnitude of a combination, although it may be inefficient and wasteful, is sufficient to prevent potential competition from becoming actual. It is still a matter of dispute as to just where the line should be drawn between fair and unfair competition and between reasonable and unreasonable restraint of trade. But from the main proposition, that it is necessary to uproot whatever artificial advantages exist, there is little dissent.

Opinions differ as to the ultimate extent of the control which should be exercised over combinations. Disinterested publicists and economists declare that combinations should not be destroyed but should be retained and be subjected to such supervision as will deprive them of power for evil. In support of this position they contend that the combinations possess superior advantages over competitive producers in respect to economies in production and distribution, the use of by-products, managerial ability, the constancy of employment and the protection of labor, steadiness of prices, and the extension of foreign trade. They summarize their convictions by saying that combination is inevitable in spite of legal restrictions because natural laws are more powerful than human laws. On the other hand, equally high-minded and competent students deny the superiority of combinations and insist that the only efficient plan of eliminating the evils of trusts is complete dissolution and a speedy return to the régime of competition. Combinations will disintegrate, they assert, because of their inherent weaknesses if only they be stripped of their artificial advantages. Why should such a divergence of opinion prevail between two schools of thinkers equally honest, equally intelligent, and equally public-spirited? After making allowance for temperamental characteristics, I can find only one satisfactory explanation of such a difference of views. That is a lack of sufficient data from which to draw accurate conclusions. When an eminent professor tells us that the decisions of the United States Supreme Court in the Standard Oil and American Tobacco cases were "economically unwise" because they were designed to break up the combinations, and when a distinguished publicist and economist says that the plan of dissolution which was approved by the court legalized monopoly instead of restoring the degree of competition which was necessary and proper, we are constrained to believe that these two men based their decisions upon entirely distinct compilations of facts or supposed facts.

The fundamental difference here is upon the question of the social efficiency of combinations. If it can be shown conclusively that the combinations do possess all of these economic advantages enumerated above, and that it is possible to correct their evils without destroying them, then agreement will be speedily reached that they should be preserved and the evils should be eliminated without a return to competition. If, on the other hand, the advocates of competition can demonstrate that it is impossible to remove the evils of monopoly without destroying it and that the independent large-scale producer enjoys practically all of the so-called advantages of the combination, then assent will be given to the proposition that competition must be restored and its evils abolished without resort to combination. Do we now have sufficient evidence upon which a definite verdict may be predicted? It is the opinion of the speaker that exhaustive investigations should be undertaken by the government under the direction of an interstate trade commission to ascertain the facts concerning these fundamental matters which are in dispute. Such investigations should have the widest scope. The comparison should be made between the trusts and the large-scale independent producers, not the small incompetent producers. Before we abandon competition, which in spite of its wastefulness and its other evils has contributed so much to social progress, the advocates of monopoly under government supervision must show convincingly that trusts are not inimical to society.

Do combinations really effect a saving to society? In order to determine that finally, we want to know whether the expense of management is actually reduced; whether combinations develop the highest type of entrepreneur; whether the amount of working capital is reduced because smaller stocks of finished goods are kept on hand; whether they secure greater specialization in machinery; whether they employ more scientific experts; whether they have superior advantages in the production of auxiliary products and by-products; whether their outlay for insurance is lessened; whether the gain from a comparison of methods in different plants is offset by a loss of initiative; whether increased size always brings increased efficiency; what the point of maximum efficiency in an industry is; whether the opportunity of using only the best plants of a combination is neutralized by the loss involved in purchasing unnecessary establishments in order to eliminate competition and control the market; whether the advantage in

buying raw materials is offset from the standpoint of society by a loss to the producers of the raw materials; whether production under combination tends to uniformity, constancy, and routine in methods and products and discourages the introduction of new processes and products; whether the combinations have improved the quality of products by removing the inducement to alloy and adulterate their goods; whether laborers are insured steadier employment at better wages under more sanitary conditions; whether the alleged efficiency of trusts is due to cunning, jugglery, and Machiavellism in business rather than efficiency in manufacturing; whether combinations have a more efficient system of credit and collections; whether there is a material saving to society by the elimination of middlemen, advertising, and soliciting; whether the social saving in the reduction of cross freights is a negligible quantity; whether the combination is necessary to promote foreign trade; and even, if it be necessary, whether the social welfare is promoted by this subsidizing of foreign trade.

These are some of the points concerning which information should be secured. When economists have access to such knowledge there will be some approach to unanimity of opinion as to the efficiency of combinations and the proper treatment of them in the interest of industrial society. This is absolutely essential, for any policy of regulation which is not based on facts and sound economic reasoning will not be permanent. With the establishment of federal control over accounts and capitalization, and with the progress of cost accounting, the obstacles in the way of such an investigation are not insuperable.

I do not wish to leave the impression that I believe nothing should be done to restrain the improper conduct of combinations while the proposed investigations are in progress. Positive and immediate action should be taken to wrest from trusts their artificial advantages and to prevent further intrenchment of their power. Such action may properly include amendment of the patent laws, federal licensing or federal incorporation of companies engaged in interstate commerce, prohibition of discrimination in prices and of other undisputed forms of unfair competition and restraint of trade, and federal control over capitalization and accounts. This would leave for future determination the question whether or not the combination shall be retained as a desirable form of industry because of its superiority.

Turning now to the question of business depression, I beg to

suggest that the importance of the factor of uncertainty as to government control of corporations has been somewhat exaggerated. Admitting that there is uncertainty, we must distinguish between two classes of enterprisers who may be affected by this state of mind. On the one hand there are the small producers and independent large-scale producers (actual and potential); on the other hand there are the combinations. The cause of uncertainty among the former is not an apprehension of government intervention in their business, but a fear that the government will not interfere effectively with the prevalent practices of the combinations and that the independents will be left exposed to the merciless methods of the trusts. The independent producer, therefore, hesitates before venturing his capital and labor in an enterprise that may be crushed by the trust, which may cut prices in his normal territory below the cost of production, or which may prevent his obtaining raw materials or entering markets through factors' agreements. The trusts themselves are therefore by their very existence responsible for part of the hesitancy in the business world.

Uncertainty on the part of the trusts may arise from three causes: doubt as to whether or not certain methods recently introduced into business conform to the ethical standards of business men; doubt as to the legality of the said methods; and doubt as to whether or not the practicing of such methods as are accepted as unlawful will involve the offender in prosecution and punishment. In view of the disclosures made in the recent prosecutions by the government it is safe to say that little of the depression in business can be attributed to any certainty of combinations which springs from a solicitous fear lest they violate the code of business ethics.

Let us now examine the ground of doubt as to the legality of certain methods. Time does not permit a consideration of the decisions upon each specific question submitted in the principal paper. However, an examination of the decisions of the federal courts in *United States vs. The Southern Wholesale Grocers' Association*, *United States vs. The General Electric Company*, *United States vs. The Standard Oil Company*, *United States vs. The American Tobacco Company*, *The Miles Medical Company vs. Park & Sons Company*, *The Bobbs-Merrill Company vs. Straus, Bauer vs. O'Donnell*, and in other cases discloses the fact that most of these practices are clearly condemned by the courts.

Let it be conceded that there is a twilight zone,—that there are various specific acts, the legality of which has not been settled by the courts of final resort. Nevertheless, where the *intent* of such acts is to obstruct the course of trade and to drive the competitor out of business with a view to creating a monopoly, there would seem to be little doubt in the mind of the careful business man that such practices are unlawful.

After making allowance for a degree of uncertainty as to the legality of various methods, I cannot escape the conviction that much of the uncertainty which has recently disturbed the minds of business men arose from a doubt as to whether or not or how soon the government would begin proceedings against them for specific acts they knew to be contrary to business ethics, positive enactments, and the spirit of the courts' decisions. A partial remedy for such uncertainty will be found in the correction of methods of business men themselves so that their practices will conform to the principles enunciated by the Supreme Court even though their own particular acts may not have been under review by the court. There is evidence that some companies are already putting their houses in order.

In conclusion, the hesitation in our policy of trust regulation is due in part to the difference of opinion among economists respecting the essential point in the controversy,—namely, the efficiency of combinations. Agreement can be attained only when the public has an adequate knowledge of the facts, and this information must come through investigations conducted under the authority of the government. When a consensus of opinion is developed and disseminated, the people will cease to be confused in their views and a policy consistent with economic progress can be adopted.

J. E. LE ROSSIGNOL: Although I find it very difficult to discuss this subject, I am consoled by the thought that the author of the paper has had the same trouble, and has therefore given more attention to the trust problem in general than to a consideration of the economic effects of certain recent decisions.

It is not stated in the paper just what decisions are to be considered, but it may be assumed that the Standard Oil and Tobacco decisions of May 15 and May 29, 1911, are the chief of those to which reference is made. As to their immediate effects, it is impossible to determine to what extent they had been discounted

before the decisions were announced. As President McVey has said, their effects had been discounted, in a sense, ever since the first enforcement of the Sherman Act. This discounting is one of the most provoking features of the stock exchange, and is decidedly bewildering to the outsider who tries to understand its mysterious operations and the effects thereof. It is a case of "heads I win; tails I don't lose;" for if a given event is followed by a definite change in the prices of stocks it is promptly said to be the cause of that change; but if the change does not take place, the effects of the event, whether foreseen or not, are said to have been discounted. Certainly, the proper appreciation of the causal relations of economic events, as distinguished from mere sequences, is given to few men. This may be the reason why the property of thousands of innocent speculators so quickly passes into the hands of a few wizards of finance.

But I believe that I may say without fear of contradiction that the stock market heaved a sigh of relief when the decisions were at last announced; for then the worst was known and it was seen that the patient would live, even though he would have to pass through a painful period of dissolution and reorganization. Moreover, the bad effects of the Standard Oil decision seem to have been over-discounted, for on May 16 there was a marked revival in speculation and sharp advances in both industrials and railways; which, however, lasted for little more than a week. The immediate effects of the Tobacco decision were different, for on May 31 there was a tremendous break in American Tobacco stock, with a general decline in stocks, followed by an upward reaction later in the day. Standard Oil stock, however, remained fairly strong.

After a while the stock market seems to have put a somewhat more favorable interpretation upon the decisions; and the comparative buoyancy that prevailed during the months of June and July may safely be attributed in part to this cause. During these months there were a few other favorable circumstances, with some less favorable events; but toward the end of July unfavorable influences predominated, such as reports of damage to crops, the decision of the Interstate Commerce Commission in the Spokane cases, and the Moroccan embroglio. Early in August the stock market collapsed, and depression ensued which lasted, with scarcely a break, until March, 1912. It is clear enough, then, that the decisions caused a considerable disturbance in the movement of stocks that might be compared to a back eddy in an ebbing

tide; but presently the ebb continued, and the eddy was lost in the numerous currents that made up the general stream. As to the effects of the decisions upon general business, these must necessarily be far more difficult to determine.

After a time the trusts were dissolved, in accordance with the decrees of the court, and the effects from the point of view of the stockholders, whose property has greatly increased in value, have been decidedly beneficial. The subsidiary companies still seem to work in harmony, without any undue competition, and the consumers pay more for oil and tobacco than before the dissolution. But even these effects can hardly be attributed to the dissolutions, but to changes in the conditions of supply and demand, as the increased demand for gasoline on the part of owners of motor cars. The following table shows the prices of oil and tobacco products from April to June, 1913.

MONTHLY AVERAGE EXPORT PRICES

(From the *Monthly Summary of Commerce and Finance*)

	April 1911	April 1912	April 1913	October 1913
Oils:				
Mineral, crude, etc. (gal.).....	\$0 .028	\$0 .037	\$0 .036	\$0 .044
Refined:				
Naptha, etc. (gal.).....	.073	.098	.148	.156
Illuminating (gal.).....	.055	.059	.070	.063
Lubricating (gal.).....	.117	.128	.149	.144
Tobacco:				
Leaf (pound).....	.114	.110	.120	.115
Cigarettes (thousand).....	1.37	1.47	1.56	1.94
Plug (pound).....	.251	.267	.270	.242

Meanwhile, the prosecution of trusts has continued; other dissolutions have been ordered; there has been talk of voluntary dissolution, abolition of interlocking directorates and investigation of the comparative efficiency of trusts and independent corporations; and finally, the trust question is to be taken up by Congress, and private monopoly, wherever found, is to be abolished. The dissolutions in question cannot, of course, be regarded as causes of these later developments; but links in the chain of cause and effect they certainly are, being a notable expression of the determination of the people of the United States that the trust question must be settled in some satisfactory way.

The trust dissolutions, considered as isolated events, seem

unimportant, and their effects insignificant; but when taken in connection with the other prosecutions under the Sherman Act, the general attitude of the people, and the policy of the Government toward both trusts and railway companies, they are seen to be part of a movement that has rapidly gained strength in recent years and is a serious menace to the power of "big business," if not to "little business" as well. It would be interesting if the effects of this movement could be measured statistically, but the subject is too complicated for this method of treatment.

The following figures, compiled by Professor Wesley C. Mitchell and Doctor Minnie T. England, show clearly that we have suffered from a depression during the year 1913, but throw little light upon the fundamental or immediate causes of the depression. The index number of Professor Mitchell is based on average prices of the common stocks of forty railway companies; that of Doctor England is based on average prices of the common stocks of thirty-eight industrial corporations. Mr. Babson has compiled similar statistics showing changes in the barometer of prosperity, but giving little information as to the causes of those changes.

	INDEX NUMBERS							
	1910		1911		1912		1913	
	Ry.	Ind.	Ry.	Ind.	Ry.	Ind.	Ind.	
January	108	113	98	98	91	92	98	
February	101	107	99	99	90	91	90	
March	107	108	99	101	93	95	90	
April	102	105	98	101	96	99	90	
May	101	102	98	103	95	100	90	
June	96	95	102	102	93	102	82	
July	89	92	101	102	92	103	86	
August	92	93	101	97	95	107	88	
September	91	93	89	90	96	108	94	
October	98	97	92	88	95	107	86	
November	98	97	94	90	93	105	82	
December	96	95	95	90	90	101	..	

The prices of stocks form a good barometer of industrial weather, for they vary quickly in response to favorable or unfavorable influences. Unfavorable conditions have predominated during the past four years, and prices of stocks have been for the most part depressed. Among the depressing causes most frequently mentioned in the financial journals have been the following: poor crops; wars in China, the Balkans, and Mexico; financial stringency in Europe; elections; political agitation against railways and trusts, including prosecutions and dis-

solutions; decisions of the Interstate Commerce Commission against railways; labor troubles, especially among railway employees; revision of the tariff; currency legislation; prospects of further investigations and legislation.

Regarding most of these influences as superficial, Mr. Babson says that the present depression is due to extravagant expenditure, especially on automobiles. Professor Irving Fisher attributes it to increased production of gold, rising prices and rising rates of interest; while Professor W. G. L. Taylor and Doctor England, taking a broader view, hold that a period of depression, if not a serious crisis, is now due, because of the disturbance of industrial equilibrium necessarily connected with an accumulation of mistakes and miscalculations during a long period of prosperity, and that stable equilibrium can be restored only by a general shaking up and extensive liquidation. When the situation is thus considered in its broader aspects, the theory that the crisis of 1907 was brought about by Mr. Roosevelt and that the present depression is the work of Mr. Taft, Mr. Wickersham, President Wilson, Mr. Bryan, Mr. Redfield, and other standard bearers in the crusade against "big business" is seen to be a gross exaggeration.

For all that, no one can read the economic history of the past few years without feeling that the enemies of the so-called "plutocracy" have been growing in strength and determination, that they have interfered to a considerable extent with business interests in the past, and that they are likely to make more trouble in the future. Unquestionably, the stock market has frequently felt tremors from this source; promoters and investors have often been discouraged; and, as in the case of the railways if in no other, net earnings have been affected and extensions and improvements delayed.

The protagonists of "big business," like the devils in the parable, ask only to be let alone. They cannot and will not be let alone; but it is well to remember, in all efforts toward reform, that the interests of "big business" are intimately connected with those of "little business," and that the interests of the working class are inseparably connected with both. Ardent reformers often speak of these three classes as though they were separate societies that could exist apart, and eagerly demand the destruction of "big business," which is the heart and brain of the industrial and financial organism. Such an attitude reminds one of the

old psychology which treated intellect, feeling and will as though they were separate compartments in the soul, any one of which could exist without the others. The old fable of the body and the members might well be studied by many well-meaning reformers, who do not quite realize the far-reaching consequences of their proposals. They are like the syndicalists who try to break up machinery and ruin business, forgetting that they are doing serious damage to themselves. It is evident that the spirit of syndicalism is not confined to syndicalists.

GEORGE E. PUTNAM: For the furtherance of business prosperity it is obviously necessary that a well-defined plan of dealing with trusts be instituted. And few will deny that the first move should be made in the direction of reducing to approximate certainty the law on unfair methods so as to prohibit in the future those practices which have so largely contributed to the growth of industrial combinations.

But such amendment to our existing laws does not solve the problem of dealing with trusts already formed. Shall it be assumed that the trusts are inherently evil, that they are founded on business irregularities, and an attempt be made to dissolve them? Or is it conceivably possible that some of the trusts really enjoy the economies of large scale production to the extent that their superiority over smaller concerns could be established? If so, would not regulation be better than dissolution? The whole matter of public policy seems to revolve about the correct answers to these questions. And it is not likely that a trust program will be wise or effective which does not make a distinction, based on facts, between the relatively efficient and inefficient combinations.

Whether or not the view of Professor Hotchkiss be generally accepted—that on the whole trusts are inefficient—it is my belief that we are still groping in the dark, that we have no immediate means of ascertaining the degree of efficiency or inefficiency of these concerns. The savings due to managerial ability, coöperation, integration, abundant supply of raw materials, and transportation facilities are but vaguely understood. Moreover in competitive and related industries the problem of cost is one of joint cost under varying conditions of demand and ever changing methods of production. Even with a superabundance of facts relative to costs and large scale economies, it would require con-

siderable care over a period of years to apply the efficiency tests with any degree of accuracy. It seems unsafe, therefore, to proceed on the theory that trusts are generally inefficient, are not worth saving, and that combinations *per se* should be dissolved.

As regards the possibility of dissolution there are again grounds for some difference of opinion. For the purpose of making careful analysis it is necessary to distinguish between trusts formed primarily to secure control of the market under lax corporation laws and those formed to prevent destructive competition. In the first instance combinations were invited. They responded to the invitation although they were not prompted by economic necessity. With reference to this type of combination it will be granted that a decree of dissolution could be made effective. Indeed, it would not be surprising if dissolution were made voluntarily to protect the stockholders from useless litigation.

However, in the case of those consolidations made for the purpose of avoiding destructive competition the situation appears to be very different. There seems to be a set determination on the part of business concerns, even retailers, to combine when a falling price—occasioned by an appreciating currency or by destructive competition—becomes imminent. Such combinations have a reason for existence, especially in those industries where prices and profits are subject to violent fluctuations. That the law can withhold a sound legal status in these cases is assured; but that effective dissolution is possible is a question on which the history of trust development throws considerable light. Combinations have been going on for approximately half a century, first under one form of organization, then under another, ever seeking to secure a sounder legal status. And now that their position is again insecure, there is a distinct tendency to revert to the earlier and more objectionable form of pooling. While the evidence is not sufficient to establish the extent of such a tendency, it is manifestly the step that faltering business will take when all else fails. Of course, pooling agreements are objectionable, but they are difficult to detect and, like other coöperative schemes which are beginning to be successfully utilized, can secure for themselves permanency when there is sufficient at stake and when business men have acquired the coöperative spirit.

Moreover, the life of a business generation is steadily growing in length, and a public policy which contends that legitimate

monopoly in the field of industry is altogether impossible, or that competition under a highly capitalistic régime can be made to operate at all times, will in all probability encourage law violation and thereby defeat its own purpose. It seems doubtful, therefore, whether effective dissolution can always be accomplished when economic forces are strongly opposed.

The ultimate program for effective trust dissolution would seem to be one taking cognizance of the desirability of some combinations either because they are efficient or because they have become vigorously intolerant of competitive conditions. To dissolve the efficient concerns would mean a social loss. To dissolve completely the other type would probably be impossible. Therefore the natural alternative presents itself in the form of government price regulation of some industrial corporations engaged in interstate commerce.

However objectionable this plan may seem—and its opponents are clearly in the majority—I feel, nevertheless, that it has a number of merits, when properly limited, and that the ultimate result of its adoption would be for the best interests of all concerned. At present big business initiative is wavering, due perhaps to a combination of causes, but in no small measure to the uncertainty growing out of proposed trust legislation and dissolution. To reduce to practical certainty the law on unfair methods of competition is an insufficient remedy for these conditions. In justice to the public and to wavering business there is needed an intelligent guidance, such in fact, as can be secured only through the aid of a commission composed of experts in whom is vested the three-fold function of investigation, control, and coöperation with the Department of Justice. An investigation commission would have the burden of its duties materially reduced if all corporations engaged in interstate commerce were required to submit full and complete reports. Price regulation, however, need not be made to apply immediately to all corporations, certainly not to those doing a legitimate business. On the contrary, complete control could be assumed only as the need appeared, or as *gradually*, in fact, as corporations were found guilty of wilful law violation. Such a plan would not only countenance price agreements where necessary, but at the same time would operate as a powerful restraint on the use of illegal methods,—so that little regulation would really be necessary. And finally, the commission, having satisfied itself with reference

to the efficiency or the necessity of a combination, could act in an advisory capacity with the Supreme Court in a dissolution proceeding. Those who are familiar with the obstacles confronting the Supreme Court in recent dissolution cases will, I believe, recognize that the services of a body of experts would be invaluable.

C. J. BUELL: It is with some hesitation that I venture to say anything on this subject. But there are some things that have not been said that ought to be said.

I remember very well when the Sherman anti-trust law was passed, and how it impressed me at the time. I think it has been effective in doing what it was intended to do, namely, to draw a red herring across the trail of the tariff-reform agitation of that time. The iniquities of the tariff system were causing great unrest among the people, and something had to be done; so the defenders of the tariff swindle brought forward two measures, the Sherman anti-trust law and the reciprocity scheme, which they hoped would calm the people and switch them off the track of tariff discussion. The scheme worked for the time.

So far as can be discovered, the anti-trust law has in no way hurt the trusts; but it has been very effective in putting labor agitators into jail. Several innocent men are now in jail in the State of Colorado, charged with having violated the anti-trust law; while Standard Oil is now worth nearly a hundred million dollars more than before it was dissolved by the courts. The same is true of the tobacco trust. Its stock went up after the dissolution. This is a new and strange phenomenon in the world, that a thing should be more strong and powerful after it has been legally killed than when it was alive.

In this discussion I take it that public service corporations are not to be included. They are monopolies in the very nature of things, and are wholly different from the industrial trusts, every one of which owes its very existence and all its power for evil to unwise and unjust statute laws. The tariff is one of the greatest bulwarks of the trusts. That was the avowed object of the tariff,—to enable the American manufacturer to get more for his goods than would otherwise be possible. Can we blame him for taking advantage of the laws we have passed for his express benefit? Wouldn't he be a chump if he didn't? Then, again, our patent laws are so framed that they are of very little benefit

to the inventor. But they do help the big capitalists to swindle the inventor on the one hand and the purchasing public on the other.

Take the steel trust. To what does it owe its power? Largely to the tariff, to some extent to patents, but more than all else to its monopolization of the ore beds, due to a system of taxation that encourages them to grab all the mines they can get hold of and prevent others from using them.

If you really want to get rid of the trusts, don't prosecute them, repeal the unjust laws to which they owe their power for evil, and they will quickly become harmless. And until those laws are repealed, you can never destroy them by anti-trust legislation or court decisions.

VANDERVEER CUSTIS: We have heard the trusts spoken of as if they were not the results of evolution but the artificial products of designing men who wished to secure for themselves the gains of promotion or the profits of monopoly. That such motives played a large part in their formation is unfortunately true. Yet they are nevertheless products of evolution. We have them with us, not only because of the gains that could be made from them, but because the conditions were such as to select them for survival. This is not to say that they are either good or inevitable. The rattlesnake and the yellow fever mosquito are products of evolution, and to say the same of the trusts is by no means to beg the question in their favor.

What I wish to emphasize is that a recognition of the evolutionary character of the trusts is important. The policy of mere dissolution will not accomplish satisfactory results if the forces that led to the formation of the trusts are left at work. Some of these, indeed, it is proposed to render ineffective or to destroy, but this is not true of all of them. This is fortunate, for some of these forces are of great significance in connection with industrial efficiency. The whole history of modern industry has been marked by the development of concentration, and the result is that in an increasing number of industries any competition that we are likely to have is competition between large and powerful units. None of us, I suppose, would advocate a return to the conditions of small industry; but we often fail to realize, what we know well, that competition between great industrial organizations, particularly where much fixed capital is used, is a very

different thing from the old competition. Such competition is often destructive in character and is injurious alike to producers and consumers. Granting that the gains of promotion and of monopoly are important among the causes of the formation of trusts, it should always be borne in mind that another very important cause is to be found in the character of the competition that existed just before they were formed.

Regulation is necessary in any case. I am not one of those who believe that it is impossible to dissolve the trusts; but if it be decided that this is a wise policy to adopt it should be remembered that dissolution alone is inadequate. Legitimate motives for combination would still remain; and if combination, as we commonly understand the term, is to be made impossible, it is to be expected that the evolutionary forces will be turned in some other direction. If our industrial civilization is to go forward it is practically certain that the old forms of industrial organization will pass away and that new forms will appear. The problem is not so much the choice between the regulation of the trusts and the reestablishment of competition, as the choice between the regulation of the trusts and the development and regulation of new industrial conditions in which, of course, it is possible that more or less competition may prevail.

J. M. CLARK: In agreeing with Dr. Custis, I want to add to what he said, giving the principle he stated a broader application than he made of it. That principle holds not only in the businesses we know as trusts and are trying to dissolve as such, but in other businesses that we think of as competitive: wherever, in fact, the distinction between prime cost and total cost is a material fact. In all such businesses it is true that in times of depression active competition tends to bring prices down to a cutthroat level and so to end in agreements, as is indicated by the facts which Professor Putnam brought out.

I confess to being a heretic as to the "law of competitive price" in that I do not think it tends to a definite cost level in most cases, but rather fluctuates indefinitely between two levels, a lower level below which producers go out of business and an upper level above which new capital and enterprise comes in. The lower level is, approximately, that of prime cost, and the upper level is approximately total cost, and I think the law of competitive price would be clearer if it were stated in this general

form, so that the cases in which there is a tendency toward a definite cost level would become special cases of a broader general principle, the special cases in which "prime cost" and "total cost" come together. But this is an aside.

If these things are true, it is also true that the real force in many competitive businesses that now makes for tolerable conditions is not so much active competition, which tends to cutthroat war and agreements, but the poor phantom of "potential competition." This not only among recently dissolved trusts but among many businesses we have never thought of dissolving. And that this is why these semi-dissolutions, establishing as they do partial communities of stockholders' interests, still seem to be promising to produce a tolerable condition. If that is so, the emphasis is thrown back upon the proposition favored by some of the earlier speakers for preventing unfair competition by statute. Professor Durand gave three good reasons for doing this; I should like to add a fourth, namely, that we need to be sure that unfair competition shall be attacked as soon as it appears, not taken as evidence of illegal intent after it has done its work. We need to save competitors alive, not try to revive them after they are dead. The speakers have indicated that it is doubtful whether the Department of Justice or the courts will, under existing law, develop such a policy as quickly as it is needed. By statute, Congress could establish such a policy definitely, surely, and immediately.

W. W. FOLWELL said, in substance, that corporations are going to be regulated; political exigencies render that inevitable. It is most desirable that regulation be wise, and it would better be gradual. President Roosevelt in the last year of his administration sent a message to Congress recommending the amendment of the Sherman Act so as to allow parties to contracts and combinations to obtain an administrative ruling in advance as to its legality. A bill was introduced to effect the purpose. A contract or combination found obnoxious was to be forbidden; those not so found were to be immune.

Senator Nelson of Minnesota of the Senate Committee on Judiciary, to which the bill had been referred, submitted an adverse report which has ever seemed wise to the speaker.¹ It is a maxim of judges never to define fraud. Such legislation as that proposed would simply have the effect to set up particular obstacles in the

¹ Senate Report No. 348, 60th Congress, 2d Session, Jan. 9, 1909.

road of the interests, like hurdles in a race course, and set their attorneys at work devising means to circumvent them. We have had some examples of that kind of legislation which are not encouraging. Let Congress take time in anti-trust legislation.

M. S. WILDMAN: The trend of the discussion today taken in connection with that of last Saturday leads to an acceptance of the proposition that public service companies, being monopolies, ought to be regulated, while other great corporations with monopolistic features ought to be dissolved.

Leaving aside the question whether this position is sound, it seems that we who profess to emphasize the truly economic elements in a problem have accepted a classification of business undertakings which is essentially legal. If we accept the view that our public utilities ought to be purveyed by monopoly and that monopoly ought to be subject to regulation touching both rates and service, I, for one, am not willing to admit that the mere absence of a franchise will establish a group of business units which must be forced to compete whatever be the character of service which they render. If monopoly and regulation are appropriate for the company that furnishes me gas I am not at all convinced that monopoly and regulation are not appropriate for the company that furnishes me milk or coal. The criterion should not be in the legal differences involved but in the nature of the service rendered and the degree to which the consumer can or cannot avail himself of the benefits of actual and effective competition.

WILLARD E. HOTCHKISS: The consideration shown by my critics makes it unnecessary to detain you long. There are perhaps one or two points upon which a further word may be in place. One of the speakers seems to have gained the impression that my paper contained a general indictment of trusts on the ground of inefficiency. All I undertake to maintain in this connection, and I think the paper expresses this view, is that trust efficiency can no longer be assumed. Lapse of time, the operating history of trusts, the accumulation of documentary material, and the developing discussion of the topic have shifted to the trusts the burden of showing by affirmative proof a balance of superior efficiency wherever such balance is claimed. The question of efficiency, however, is one upon which there is need of further

light in the form of concrete information applied to particular trusts and to particular phases of their operation.

As a former deputy commissioner of corporations, even more as the first statistician of the Bureau, Professor Durand speaks with authority in pointing out the limitations surrounding any special inquiry into trust efficiency. "Of investigations there is no end" expresses no doubt a sentiment which at times we all feel. On the other hand, I do not understand Professor Durand to infer that we ever can or should have an end to inquiries into trusts or into business in general. The relation between government and business has become too intimate and too vital to the continued progress of the country for the government seriously to consider any radical curtailing of its investigating activity. Enlightened publicity with respect to business affairs has become a permanent necessity and will figure very largely in the service which any industrial or trade commission may render.

Professor Wildman has raised the very important question, "What will follow the conclusion that any industry is permanently and advantageously monopolistic?" I quite agree with the view that such a conclusion will carry the same burden of responsibility for government regulation as now attaches to the so-called public service corporations. Whatever the present legal distinctions, I can see no essential difference in economic effect between accepted and approved monopoly in the supply of gas and a similar monopoly in the supply of anthracite coal.

One of the speakers has seemed to suggest that the paper as read is a wide departure from the subject, "Recent trust decisions and business." In his remarks he appears to identify business with the condition of the stock market. If this is his inference, it seems to me to represent a very inadequate view. Security transactions no doubt are in some measure a barometer from which the immediate business situation, more particularly the business mind at any time, can be roughly ascertained. Business, however, is a much more comprehensive concept than this, and one which, as set forth in the paper, must be regarded from the long-time point of view. From this standpoint it is the possible permanent effects of government activity which should receive primary emphasis in discussing a subject like trusts,